

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION ONE

DANIEL MCKAY,)	No. ED103549
)	
Appellant,)	Appeal from the Circuit Court
)	of St. Charles County
vs.)	1511-CC00453
)	
STATE OF MISSOURI,)	Honorable Nancy L. Schneider
)	
Respondent.)	Filed: June 28, 2016

Daniel K. McKay ("Movant") appeals from the motion court's judgment denying his successive motion for post-conviction relief without an evidentiary hearing. Movant was convicted, following a jury trial, of one count of unlawful possession of a firearm and two counts of sale of a controlled substance. State v. McKay, 411 S.W.3d 295, 297 (Mo. App. E.D. 2013). He was sentenced to twenty years in prison on each of the controlled substance counts and seven years in prison on the firearms count, with the sentences ordered to run concurrently with each other and with a prior fifteen-year sentence he was serving for a narcotics-trafficking conviction in another county, where he had been on probation at the time of his arrest in this case. Id. at 299.

REVERSE AND REMAND.

Division One holds: Movant's second post-conviction relief motion was not successive. Before filing his second post-conviction relief motion, Movant waited until he directly appealed for a second time, which contested the trial court's judgment relating to the remand hearing in which the trial court found Movant had not been prejudiced by the delay in bringing his criminal case to trial. In Movant's second pro se post-conviction relief motion, he could then raise any claims of ineffective assistance of counsel during the second direct appeal. Further, the second pro se motion, in fact, raised claims relative to the hearing on remand. Although Movant's "relatively informal," pro se motion gave notice that Movant intended to pursue relief under Rule 29.15(e), Movant's appointed counsel never had a chance to file the amended motion, which would have been the final, expert legal pleading setting forth all grounds for relief known to the movant and would have more clearly defined Movant's claims related to the remand evidentiary hearing, which could not have been raised in Movant's first post-conviction relief motion. Rule 29.15(e); Bullard, 853 S.W.2d at 922-23.

Opinion by: Roy L. Richter, J.

Robert G. Dowd, Jr., P.J., and Mary K. Hoff, J., concur.

Attorney for Appellant: Lisa M. Stroup

Attorney for Respondent: Chris Koster, Dora A. Fichter

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.